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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. 786

JAMES C. DAVIS, FEDERAL AGENT FOR CLAIMS DUE IN OPERATION OF ATLANTIC COAST LINE RAILROAD COMPANY, PETITIONER,

vs.

R. H. PRINGLE, AS TRUSTEE IN BANKRUPTCY OF THE ESTATE OF CHARLES F. BOYD COMPANY, INC., BANKRUPT

ON A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR CERTIORARI FILED NOVEMBER 12, 1934

CERTIORARI GRANTED MARCH 4, 1935

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., APRIL 16, 1925

[fol. 1] **IN UNITED STATES DISTRICT COURT**

CAPTION

THE UNITED STATES OF AMERICA,
Eastern District of South Carolina,
In the District Court, To-wit:
In Bankruptcy.

At a District Court of the United States for the Eastern District of South Carolina, begun and held at the Court House in the City of Columbia, S. C., on the third Tuesday of January, being the fifteenth day of the same month in the year of our Lord, one thousand nine hundred and twenty-four.

Present: The Honorable Ernest F. Cochran, United States District Judge for the Eastern District of South Carolina, presiding at Columbia, S. C., and the Honorable Henry A. M. Smith, United States Judge, presiding at Charleston, S. C.

Among other were the following proceedings, to-wit:
In the matter of Charles F. Boyd Company, Inc., Bankrupt.
Ex Parte: James C. Davis, Federal Agent for claims due in operation of Atlantic Coast Line Railroad Company.

IN UNITED STATES DISTRICT COURT

PETITION OF JAMES C. DAVIS, FEDERAL AGENT

To the Honorable the said Court:

The Petition of James C. Davis, Federal Agent, respectfully shows:

[fol. 2] First. That at the time of the accrual of the indebtedness hereinafter set forth the Atlantic Coast Line Railroad Company was being operated under Federal control by the Director General then in office, and that there accrued during the said time Two Thousand Two Hundred Thirteen and 70/100 Dollars ($2,213.70) for freight, storage and demurrage, the Proof of Debt for which has already been filed in this proceeding.

Second. Your Petitioner further alleges that under the law, this indebtedness and claim, being in favor of the United States, and so accrued during Federal control, is a debt due to the United States, and therefore is a preferred claim, and a debt due the public to be paid out of the assets of the bankrupt estate in priority over other claims proved in said case.

Wherefore your Petitioner prays that said amount be so paid as such prior and preferred claim.

Rutledge, Hyde & Mann, Attorneys for Petitioner.

Petition verified.

IN UNITED STATES DISTRICT COURT

ORDER OF L. K. LEGGE, SPECIAL REFEREE—Filed August 21, 1922

On August 20th, 1920, Charles F. Boyd Company, Inc., was adjudicated bankrupt. On February 23rd, 1921, John Barton Payne, Federal Agent, filed in the cause two claims for freight, storage and demurrage earned by the Atlantic Coast Line Railroad, as follows:

(a) Claim for demurrage accruing on and betwen April 19th, 1918, and June 10th, 1918,—$1,883.87.

(b) Claim for freight, storage and demurrage accruing on and between April 29th, 1918, and August 27th, 1918, $329.83.

[fol. 3] These claims were filed as unsecured claims in the usual form, duly itemized, and no claim for priority as to them was made at that time.

On September 28th, 1920, there was filed on behalf of the Seaboard Air Line Railway a Proof of Unsecured Claim for

"Freight, storage and demurrage on shipment of ground hulls from Willich & Co., New Orleans, La., to Charles F. Boyd & Co.," in the amount of $2,207.43. This claim was not itemized other than stated. On February 6th, 1922, counsel for the Seaboard Air Line Railway Company requested by letter that the claim last above referred to be listed as entitled to priority under Section 3466 of the Revised Statutes of the United States. Thereafter, on February 9th, 1922, counsel for James C. Davis, Federal Agent, filed a notice of appointment of James C. Davis as Federal Agent in the place of John Barton Payne, and also to the effect that the claims theretofore filed in the name of John Barton Payne, and first above referred to, were entitled to priority as debts due the United States.

After due notice a hearing was had before me on May 29th, 1922, at which time the attention of counsel representing the claim of Seaboard Air Line Railway Company was directed to the fact that the claim as filed made no mention of the date or dates of its accrual, and that there was, therefore, nothing in the record to show that this claim had accrued during the period of Federal control. The hearing was thereupon adjourned in order that counsel might file such amended Proofs of Claim and Petitions for priority as they might be advised.

Subsequently, on July 27th, 1922, there was filed on behalf of James C. Davis, Federal Agent, a Petition for priority as to the two claims first above referred to, as accruing during the period of Federal control of the lines of the Atlantic Coast Line Railroad Company. On August 2nd, 1922, I notified counsel for the Seaboard Air Line Railway Company that more than two months had elapsed since the adjournment of the hearing on May 29th, for the purpose of enabling them to file an amended Proof of Claim, and requested that their claim be gotten in such shape as to be properly before me for a decision on the merits. No amended Proof of Claim has been

[fol. 4] filed, however, and, as the record now stands, there is nothing to show when this claim accrued.

The sole question presented before me is whether, under the provisions of the Revised Statutes, Section 3466, and the Bankrupt Act of 1898, these claims are entitled to priority. So far as concerns the claims for freight, storage and demurrage accruing on the lines of the Atlantic Coast Line Railroad, it is admitted that those claims accrued during the period of Federal control. As to the claims for freight, storage and demurrage on the lines of the Seaboard Air Line Railway Company, there is, as I have already stated, nothing before me to show when the alleged indebtedness arose, and the claim for priority might very probably be dismissed for that reason. Realizing, however, that under the principle "nullum tempus occurrit regi," this claim may eventually be so amended as to show that it accrued during the period of Federal control, I shall so regard it for the purposes of this decision, as the present cause has been pending now for nearly two years and should, in the interest of all concerned, be terminated without further delay.

Prior to the Bankrupt Act of 1898, there was no doubt but that all claims of the United States, whether for taxes or otherwise, were entitled to priority, in view of the provisions of the Revised Statutes, Section 3466, and because of the further fact that the Federal Government was not bound by the then existing Bankruptcy Law.

Lewis vs. United States, 92 U. S. 618; United States vs. Herron, 20 Wall. 51; Harrison vs. Storey, 5 Cranch. 289; United States vs. Dallas, 140 U. S. 632; Redfield vs. Parks, 132 U. S. 239.

By the Bankrupt Act of 1898, however, the United States must, except as to claims for taxes, be considered as having assumed the position of a general creditor only (Guarantee Title & Trust Co., Trustee, vs. Title Guarantee & Surety Co., 224 U. S. 152).

The question in the case last cited was as to the priority of payment out of a bankrupt estate of a claim due the United States on a Bond, and a claim for wages due a laborer. The Court considered [fol. 5] the Act of March 3rd, 1797 (Revised Statutes Sec. 3466) in its relation to the Bankrupts Acts of 1867 and 1898, and reached the conclusion that, while the Bankrupt Act of 1867 and the Act of March 3rd, 1797 (Revised Statutes, Section 3466) by both of which debts due the United States were given priority over all other claims, were in pari materia, the latter Act affirming the former, yet the Bankrupt Act of 1898 with its change of provisions regarding priority, was not in affirmation of Revised Statutes, Section 3466, and indicated a change of purpose in that respect. The Court held accordingly that, in spite of the provisions of Revised Statutes, Section 3466, claims of the United States, other than for taxes, are, since the Bankrupt Act of 1898, not entitled to priority over labor claims. In considering the effect of the provisions of Section 64 of the Bankrupt Act of 1898, the Court said:

"It will be seen therefore that by the Statute of 1797 (now Section 3466) and Section 5101 of the Revised Statutes all debts due to the United States were expressly given priority to the wages due

any operative, clerk or house servant. A different order is pre scribed by the Act of 1898 and something more. Labor claims ar given priority and it is provided that debts having priority shall b paid in full. The only exception is "taxes legally due and owin by the bankrupt to the United States, State, County, District or Muni cipality." These were civil obligations, not personal conventions and preference was given to them, but as to debts we may assum a change of purpose in the change of Act. And we cannot say tha it was inadvertent. The Act takes into consideration, we think, th whole range of indebtedness of the Bankrupt National, State an individual, and assigns the order of payment. The policy whic dicated it was beneficient, and well might induce a postponemen of the claims even of the sovereign in favor of those who necessaril depend upon their daily labor. And to give such claims priorit could in no case seriously affect the sovereign. To deny them prior ity would in all cases seriously affect the claimants."

So in the case of Lott vs. Salsbury, 237 Federal 191, the Circui [fol. 6] Court of Appeals for the Fourth Circuit, referring to th above decision, says:

"The United States, except for taxes due, has not, in (5) th enactment of the Bankruptcy Law, exercised its sovereign right o providing a preference for its own claims against the Bankrupt * * * The Government has, except as to taxes, put itself in th plight of an ordinary unsecured creditor."

See also in re: Jacobsen, 263 Fed. 881.

It would seem, therefore, that no reliance can be placed by th United States upon Revised Statutes, Section 3466, in support o its claim to priority, but that its claim to priority must be sustained if at all, by the provisions of the Bankruptcy Act of 1898.

It is contended on the part of the Government that these claims ar entitled to priority under Revised Statutes, Section 3466, by virtu of subdivision 5 of Section 64 (b) of the Bankrupt Act of 189 which gives priority to "debts owing to any person who by the law of the States of the United States is entitled to priority." Wit this view I cannot concur. Revised Statutes, Section 3466, wa enacted in 1797, amended in 1799, and has never since been changed Is it to be broadened by implication to include debts incurred i purely commercial transactions in which the United States has aban doned its sovereign character?

In the recent case of Krichman vs. United States, 41 Sup. Ct 514, the Defendant was indicted for offering a bribe to a Railroad porter employed on the Pennsylvania Railroad while it was under Federal control, the indictment being under Section 39 of the Crim inal Code of the United States, making it an offense to offer a brib to an officer of the United States, or to a person acting for or on be half of the United States in an official function under or by the au thority of a department or office of the government. The Supreme Court held that the indictment would not lie. In considering th Statute creating the offense, the Court said:

"The Statute creating the offense was passed long before there [fol. 7] was any thought of the Government taking over the Railroads. That does not prevent its application if the thing done offends against it. It is, however, a circumstance proper to be considered in determining whether the situation is one intended to be dealt with by Congress."

In the present case the Statute relied upon to sustain the claim for priority was passed more than a century ago and has remained practically unmodified. The language quoted above applies with equal force in consideration of the question involved here.

An examination of the Proclamation and Acts of Congress relating to Federal control shows that, while the control by the Government was absolute, it extended only so far as to give "complete possession by governmental authority to replace, for the period of the war, the private ownership theretofore existing." (Northern Pacific Railway vs. North Dakota, 250 U. S. 135).

While all the earnings of the railroad were by the Act expressly made the property of the United States, this was only "for the purpose of enabling the United States to perform the obligations that it assumed and to secure it from ultimate loss." Ibid.

In construing the Federal Control Act, the Supreme Court, in the case of Missouri Pacific Railroad vs. Ault, 256 U. S. 554, says:

"The plain purpose of the above provision was to preserve to the general public the rights and remedies against common carriers which it enjoyed at the time the railroads were taken over by the President, except in so far as such rights and remedies might interfere with the needs of Federal operation * * * The substantial legal rights of persons having dealings with the carriers were not to be affected."

It is clear that to give the United States priority in cases such as the present would interfere with the substantial legal rights of the public.

As a general proposition when the Government enters into commercial business it is to be treated as any other private citizen. [fol. 8] United States vs. Planters Bank, 9 Wheat. 904; Salas vs. United States, 234 Fed. 842; Pope vs. United States Shipping Board, 269 Fed. 319; United States vs. Strang, 254 U. S. 494.

Under the construction of the Federal Control Act, in the cases of Northern Pacific Railway vs. North Dakota, and Missouri Pacific Railway vs. Ault, and United States vs. Strang above referred to, it is clear that it was never the intention of Congress, in taking over the Railroads, to extend the power and prerogatives of the United States as a sovereign beyond that which was essential to prevent interference with their uninterrupted operation for war purposes. When we consider the decisions with reference to the United States Shipping Board Emergency Fleet Corporation, this becomes all the more evident. It is true that the war powers of the United States with reference to ocean transportation were handled through a corporation in which all of the stock was owned by the United States,

whereas with reference to land transportation, they were handled through the Director General of Railroads. Each, however, in spite of differences as to legal status, was the agency adopted by the government for the conduct of certain necessary commercial enterprises under its war powers.

It would indeed be anomalous if it should be held that the government had priority as to debts for freight charges earned in land transportation, but had no such priority with reference to freight charges earned in ocean transportation. And yet, such would be the case if the contention of the government is sustained here.

In the case of United States Emergency Fleet Corporation vs Wood, 42 Sup. Ct. 386, decided on May 1st, 1922 the Court holds point blank that, in spite of the exclusive ownership by the United States, the Fleet Corporation stood like other creditors and was not to be preferred. The language of the Chief Justice in an opinion concurred in by Justices Van Deventer and Clarke, which concurs with the main opinion of the Court in the result as to this question is most significant on the particular point involved here. The opinion in this case really involves the decision of three separate cases against the Emergency Fleet Corporation. The main opinion by [fol. 9] Justice Holmes decided that suits against the Fleet Corporation were not suits against the United States. The concurring and dissenting opinion of the Chief Justice holds that suits against the Fleet Corporation should be regarded as suits against the United States. Nevertheless, and in spite of this view, the Chief Justice concurs in the majority opinion denying priority for claims of the Fleet Corporation in Bankruptcy, and, while he does not cite the case of the Guarantee Title & Trust Co., Trustee, vs. Title Guarantee & Surety Co., above referred to, his reasons for reaching this conclusion coincide exactly with the reasoning of the Supreme Court in that case. Says the Chief Justice:

"As to the preference claimed against a bankrupt estate in No 526 by the Fleet Corporation, I concur in the conclusion of the Court that it cannot be allowed under the Statute as to preferences in Bankruptcy, because I do not think that it extends to claims of the United States except those for taxes."

The Government relies upon two decisions of the Circuit Court of Appeals as conclusive of its claim:

In re Hibner Oil Company, 264 Fed. 667; Davis vs. Pullen, 27 Fed. 650.

At first glance both of these cases would seem to be (8) conclusive of the questions involved. Upon closer examination, however, in the light of the cases above referred to, neither the Hibner case nor the Pullen case can be considered as controlling authority on the point involved here.

In the Hibner case the only question considered by the Court was whether a claim for freight charges constituted a debt due the United States. No question appears to have been made in that case as to the right of the United States to priority, nor was the decision of the

Supreme Court concerning the effect of the Bankrupt Act of 1898 on the right of the government to priority as to claims other than taxes (Guarantee Title & Trust Co., Trustee, vs. Title Guarantee & Surety Co., supra) even considered. The Court said:

[fol. 10] "If the claim is 'property' and constituted a debt due to the United States then concededly its priority was properly found * * * The claim for freight charges is 'property' derived from the operation of the carrier during Federal control and is thus 'property' of and therefore a debt due to the United States. As such it was entitled to priority as found."

There is of course no doubt but the freight claimed is a debt due the United States (Northern Pacific Railway vs. North Dakota 250 U. S. 135; Missouri Pacific Railway vs. Ault—256 U. S. 554). It by no means follows, however, that it is "as such" entitled to priority. On the contrary, the decisions referred to above show clearly that it is not.

In the case of Davis vs. Pullen, a creditor's bill had been filed and a Receiver appointed for a corporation thought to be temporarily embarrassed, but which turned out to be insolvent. The Director General filed a claim with the Receiver for freight charges accruing during the period of Federal control, and contended that this claim was entitled to priority under Revised Statutes, Section 3466, as debts due the United States. The main question involved was whether the appointment of a Receiver constituted an act which would bring into operation the provisions of Section 3466 of the Revised Statutes relative to debts due the United States. Both the Master and the District Court held that the case was not a bankrupcy or insolvency proceeding within the meaning of Section 3466. The holding of the lower Court was reversed.

The Court further considered the questions:

(a) Whether the freight claims were debts due the United States.

(b) Whether, if debts due the United States, they were entitled to priority.

Basing its decision on the Hibner case and on the (9) Supreme Court decisions in Northern Pacific Railway vs. North Dakota, supra, and Missouri Pacific Railway vs. Ault, supra, the Court held the [fol. 11] claims to be debts due the United States.

On the question of priority, the Court decided in favor of the contention of the government, basing its decision on the following cases:

United States vs. National Surety Company, 254 U. S. 73; Marshall vs. New York, 254 U. S. 380; Lewis vs. United States, 92 U. S. 618; United States vs. Barnes, 31 Fed. 705; United States vs. State Bank of North Carolina, 6 Pet. 29; New Jersey vs. Anderson, 203 U. S. 483; Richmond vs. Bird, 249 U. S. 174; Pennsylvania Cement Co. vs. Bradley Contracting Co., 274 Fed. 1003; In re Hibner Oil Co., 264 Fed. 697.

Under these decisions it says:

"In the light of these authorities we must hold the Statute (i. e., Revised Statutes, Section 3466) applicable to all debts due the United States."

It is significant that the Court, in reference to the contention of the Receiver that, even if the freight claims were debts due the United States, nevertheless such claims were not entitled to priority within the meaning of the Statute, used the following language:

"There is a certain obvious injustice in giving the United States, when engaged in an industrial and commercial venture, even although under war powers, superior rights over other creditors bearing like relations to insolvents."

It is a remarkable fact that the Court entirely overlooked the Supreme Court decision in the case of Guarantee Title & Trust Co. vs. Title Guarantee and Surety Co., 224 U. S. 152, and the decision of the Circuit Court of Appeals for the Fourth Circuit in the case of Lott vs. Salsbury, 237 Fed. 191, referred to above. The only apparent reason for so obvious an omission is that the Pullen case was not a proceeding in bankruptcy, and that the Bankrupt Law, there-[fol. 12] fore, did not apply. If this was the reason for the omission, the logical conclusion would be that the Pullen case is not to be taken as authority in construing Section 3466 as applied to proceedings in bankruptcy. In other words, even if Section 3466 applies to all debts due the United States, that Section is not to be given this extended construction when the question arises in a bankruptcy proceeding where the controlling authority with reference to debts due the United States is no longer Section 3466 of the Revised Statutes, but the Bankruptcy Act of 1898. Apart from (10) that view, however, it seems to me that the decisions relied upon in the Pullen case do not sustain the conclusion there reached that Section 3466 is applicable to "all debts due the United States," so as to include a claim for freight charges earned in the operation of the railroads by the government under its war powers and in pursuance of the Federal Control Act and the Proclamations issued by the President.

The case of the United States vs. National Surety Co., 254 U. S. 73, arose out of Bonds given to secure contracts entered into by a contractor with the United States. The contractor defaulted, and the United States, having lost thereby Thirteen Thousand Dollars ($13,000.00), the Surety Company paid to the government on account of this loss Three Thousand One Hundred Fifty Dollars ($3,150.00). Both the United States and the Surety Company proved their claims in the Bankruptcy proceedings, the government claiming priority over all creditors under Revised Statutes, Section 3466, and the Surety Company claiming a like priority by subrogation under Revised Statutes, Section 3468, providing that, when a surety pays to the United States money due upon a bond, such Surety is subrogated to the claims of the United States.

The Court held that the United States was entitled to priority for its whole debt as against the Surety Company.

It is true that language is used in the opinion of the Court which, considered alone, gives to Revised Statutes, Section 3466, the same broad scope that it had prior to the Bankrupt Act of 1898. Taken together with the decision of the Supreme Court in the case of Guar-
[fol. 13] antee Title & Trust Company, Trustee, vs. Title Guarantee & Surety Co., supra, however, this language must be construed in the light of the fact that the only question being considered by the Court was the relative meaning of Section 3466 and Section 3468 without reference to the effect of the Bankrupt Act of 1898 on the scope of those Sections, and certainly throws no light on the question in issue here.

The case of Marshall vs. New York, 254 U. S. 380, was a suit in equity against a corporation, in which the State of New York claimed priority as to certain franchise taxes and license fees. The sole question involved in the case was as to the prerogative right of the State as a sovereign to claim priority over all its subjects in the payment of debts due it. The only debts involved in the case were taxes, and the decision is based on the sovereign common law right of the State, independent of all Statutes.

The case of Lewis, Trustee, vs. United States, 92 U. S. (11) 618, involved the question of priority as to claims of the United States against the individual members and the firm of Jay Cook & Company, Bankrupt, for moneys which the United States had placed in the hands of the firm for disbursement. The fundamental decision in this case was that the then existing bankruptcy Act (i. e. Bankrupt Act of 1867), in no wise bound the United States, so that Section 3466 of the Revised Statutes was without qualification. Since the Bankrupt Act of 1898, however, Section 3466 of the Revised Statutes is qualified and controlled by the latter Act, as has already been noted in the discussion of the case of Guarantee Title & Trust Co., Trustee, vs. Title Guarantee & Surety Co., supra, in which decision the Lewis case was fully discussed. Since the case of Guarantee Title & Trust Co., Trusteess, vs. Title Guarantee & Surety Co., therefore, the Lewis case can no longer be regarded as controlling authority even as to the construction of Section 3466 of the Revised Statutes.

The decision in the United States vs. Barnes, 31 Fed. 795, related to the priority of a judgment under the Customs Revenue Laws against the Bankrupt and is based directly on the case of Lewis vs. United States, supra.

In the case of United States vs. State Bank of North Carolina, 6 [fol. 14] Pet. 29, the question involved was whether, under the Revised Statutes, Section 3466, the priority given to the United States applied to a Bond which did not become due until after the General Assignment for the benefit of Creditors. The Court held that it did apply. There was no question in this case under any Bankrupt Act.

In the case of New Jersey vs. Anderson, 203 U. S. 483, the question involved was whether a license fee imposed by a State on corporations organized under its laws was included in Section 64 (a) of the

Bankrupt Act of 1898 giving priority to taxes due a State. This case is therefore no authority on the question involved here.

In the case of Richmond vs. Bird, 249 U. S. 174, the question was as to the priority of a claim of the City of Richmond for taxes as against the claim of a landlord who had distrained for rent. The Court held that as under the laws of Virginia no superior right was given to the City's unsecured claim for taxes, the landlord's claim was entitled to priority.

In the case of Pennsylvania Cement Co. vs. Bradley Contracting Co., 274 Fed. 1003, Receivers appointed in a suit in equity desired to declare a dividend and filed a Petition for instructions as to the attitude of the government regarding taxes under the Income Tax Law. The Court held that it had no power to compel the government to declare its attitude upon the subject, and the Receivers were instructed to pay no dividend until further ordered.

The case of in re: Hibner Oil Co., 264 Fed. 667, has already been referred to.

It will thus be seen that of the nine cases relied on for the decision of the Court in the Pullen case, four involved the question of taxes, one Customs Revenue, one the recovery of money deposited by the government with the Bankrupt, one the right to priority on a Custom House Bond, the case not being in Bankruptcy, one the relative rights of the United States and a Surety Company under Section 3468 of the Revised Statutes, and, in the last (In re Hibner), the question of priority was not raised. Necessarily the language used by the Court in these cases must be referred to the questions at issue and under consideration, and I am forced to the conclusion, [fol. 15] with all deference to the learned Court of Appeals, that the decision in the Pullen case is sustained neither by reason nor by the authorities relied on by the Court, and is not in harmony with the decision of the Supreme Court above referred to.

It is therefore ordered that the Petitions for priority be and they are hereby dismissed.

Lionel K. Legge, Special Referee.

Charleston, S. C., August 21, 1922.

In United States District Court

Petition for Review of Referee's Order—Filed September 6, 1922

To the Honorable Henry A. M. Smith, Judge of the said Court:

The Petition of James C. Davis, Federal Agent, respectfully shows:

First. That heretofore your Petitioner, having filed his Proof of Debt, also filed his Petition in which he claimed priority over other creditors of the bankrupt estate by reason of the fact that the amount so claimed by him, to-wit, two thousand two hundred thirteen and

70/100 dollars ($2,213,70) was for freight, storage and demurrage accrued against the bankrupts while the Atlantic Coast Line Railroad Company was being operated under Federal control, and thereafter his Petition and Proof of Debt were referred to Lionel K. Legge, Esq., as Special Referee, to inquire into and report upon the same.

Second. That said Special Referee has filed his Order in which he disallows the claim of your Petitioner for priority as aforesaid.

Third. That such Order is erroneous upon the following grounds:

[fol. 16] (a) The Special Referee erred in holding that the claim of the Petitioner for freight, storage and demurrage was not a claim against the United States and entitled to priority under the provisions of Section 3466, Revised Statutes of the United States.

(b) The Special Referee erred in holding that the claim of the Petitioner for freight, storage and demurrage was not a preferred claim and entitled to priority under the provisions of the Bankrupt Act of Congress.

And your Petitioner alleges that as to both grounds the Special Referee was in error because it is undisputed that during the time when said freight, storage and demurrage accrued, Atlantic Coast Line Railroad Company was being operated by the Director General under Federal control; that the revenue arising therefrom became the property of the United States under legislation adopted by Congress, and that the bankrupt estate was therefore responsible to the proper representative of the United States for all such unpaid charges in priority to the other creditors.

Wherefore your Petitioner feeling aggrieved because of such Order, prays that the same may be reviewed as provided in the Acts of Congress relating to bankruptcy and General Order 27.

Rutledge, Hyde & Mann, Attorneys for Petitioner.

(Petition verified.)

In United States District Court

Order of United States District Judge Approving Order of Special Referee—Filed January 15, 1924

This matter came on to be heard upon the Special Referee's certificate filed 9 September, 1922, and the petition for Review of the Special Referee's order dated 21 August, 1922, and the other papers attached to the certificate; and counsel for the Trustee in Bank-[fol. 17] ruptcy and the petitioner, James C. Davis, Federal Agent, have been heard.

The sole question is whether the claims preferred by the petitioner, James C. Davis, Federal Agent, are entitled to priority over all other claims under the provisions of Section 3466 of the Revised Statutes. In the opinion of the Court the provisions of Section 3466 do not

apply to the claims of the petitioner. That Statute contemplated debts to the United States accruing to it directly under any satutory or contractual directions. The present claims do not fall into those categories. They are claims arising only incidentally to the temporary operation by the Government of the plant of a transportation corporation, operated by the Government in like manner as it would have been operated by the corporation itself had the Government not taken possession. The very description of the claims shows this. They are all for freight, storage and demurrage charges on merchandise transported as shipped by private parties.

The Government in possession of the Railway plant of a corporation undertook the commercial transportation of articles shipped by private persons in like manner as the same were transported by the corporation when in possession of the Railway plant and lines. For all these charges the Government Agent had a lien upon the articles transported. It was the duty of the Agent to have collected all their charges before delivering the articles to the consignees. Having seen fit to waive that lien and deliver the articles to the consignee without collecting the charges for which he had a lien the Agent of the Government under the circumstances of this case is not entitled to a prior lien upon the general estate of the bankrupt consignee.

It is therefore

Adjudged that the order of the Special Referee, Lionel K. Legge, Esq., made and dated 21st August, 1922, be, and the same is hereby approved and confirmed.

Henry A. M. Smith, United States Judge.

Charleston, S. C., January 15, 1924.

[fol. 18] IN UNITED STATES DISTRICT COURT

Proof of Unsecured Debt

In the Matter of Charles F. Boyd & Company, Bankrupt

At Charleston, in the Eastern District of South Carolina, on the 8th day of September, A. D. 1920, came John Barton Payne, Federal Agent U. S. Railroad Admrn. Atlantic Coast Line Railroad Company, by P. Nichols, of Charleston, Freight Agent, in the County of Charleston, in said District and made oath, and says that Charles F. Boyd & Company the person by (or against) whom a petition for adjudication of bankruptcy has been filed, was at and before the filing of said petition, and still is justly and truly indebted to John Barton Payne, Federal Agent United States Railroad Administration (Atlantic Coast Line Railroad) in the sum of Eighteen hundred and eighty-three & 87/100 Dollars; that the consideration of said debt is as follows:

United States Railroad Administration, Director General of Railroads.

Atlantic Coast Line Railroad

Statement of Demurrage Due by Chas. F. Boyd Company, to June 10, 1918

Cars	Bill Nos.	Date	Amount	Tax
IC-61931	2052	4/19/18	6.00	.18
NYC-25724	2171	5/9/19	3.00	.09
GT-8714	2235	6/22/18	70.00	2.10
MP-5547	2236	"	330.00	9.90
IC-142591	2243	5/24/18	120.00	3.60
B-4-46468	2244	5/24/18	120.00	3.60
Ga-8039	2245	5/24/18	50.00	1.50
UP-44332	2246	5/24/18	30.00	.90
NYC-47309	2284	5/28/18	160.00	4.80
PRR-63353	2346	6/8/18	150.00	4.50
THB-3735	2347	6/8/18	270.00	8.10
DL&W-35051	2353	6/10/18	240.00	7.20
SAL-23663	2354	6/10/18	280.00	8.40
			$1,829.00	54.87

Subscribed and sworn to before me this 8 day of September, 1920.

GEOFFREY N. MANN,
Notary Public for S. C.

In United States District Court

Proof of Unsecured Debt

In the matter of Charles F. Boyd & Co., Bankrupt.

At Charleston in the Eastern District of South Carolina on the eighth day of September, A. D. 1920, came P. Nichols (Freight Agent) of Charleston, in the County of Charleston, in said District of South Carolina and made oath, and says that Charles F. Boyd & Company the person by (or against) whom a petition for adjudica- [fol. 20] tion in bankrutcy has been filed, was at and before the filing of said petition, and still is justly and truly indebted to John Barton Payne, Federal Agent, U. S. Railroad Administration (Atlantic Coast Line Railroad Co.) in the sum of Three hundred and twenty-three and 83/100 Dollars; that the consideration of said debt is as follows:

John Barton Payne, Federal Agent, United States Railroad Administration

Atlantic Coast Line Railroad Office of Auditor of Freight Receipts

Statement of Undercharge.

On Shipment of Baled Hay Car N. Y. C. & St. L. 2181517 described below.

Consignor J. H. Colgrove Co., Inc. Point of Origin Canistoe, N. Y.

Consignee C. F. Boyd Co., Inc. Final Destination Charleston, S. C.

Way-Bill from Canistoe, N. Y. To Charleston, S. C. No. E-43—Date 4-4-18.

Articles	Weight in pounds	Class or special	Rate in cents per 100 lbs. or ton 2,000 lbs.	Total prepaid	Total collect	Total
....	....	....	.....	....	....	....

Freight Charges as Settled

Shipment refused and sold for	$306.17

Freight Charges as Should Be

Hay 25783 @ 30 per cwt.	77.35
War tax	2.32
Dem-4-25-18 to 4-29-18 inc. @ 3.00 per day	12.00
" 4-30-18 to 5- 2-18 " " 6.00 " "	18.00
" 5- 3-18 to 5-31-18 " " 10.00 " "	240.00
" 6- 1-18 to 7- 2-18 " " 10.00 " "	260.00
Storage 8-24-18 to 8-27-18 inc. @ 1c. per cwt.	16.01
War tax on Dem. & Storage	16.01
	636.00
Undercharge	329.83

Authority for Class—Authority for Rate Penna. So. Icc. 5461. Dem. I. C. C. B. 263 Item 60.

Storage I. C. C. 263 140.

Remarks: Consignees notified 4-20-18 due time 22nd and 24th, May 5th, 12th, 19th, and 26th. Sundays 10th holiday June 2, 9, 16th, 23rd, 30th. Sundays 3rd holiday.

[fol. 21] that no part of said debt has been paid; that there are no set-offs or counterclaims to the same and that deponent has not, nor has any person by his order, or to his knowledge or belief, for his use, had or received any manner of security for said debt whatever.

No note has been received for said account nor any judgment recovered thereon other than stated herein.

Deponent makes this proof because Atlantic Coast Line Railroad Co. the creditor is a Corporation and deponent is Freight Agent thereof.

P. Nichols (Freight Agent), Creditor.

Subscribed and sworn to before me, this 8 day of September, 1920. Geoffrey N. Mann, Notary Public for S. C. (Seal.)

IN UNITED STATES DISTRICT COURT

NOTICE OF APPOINTMENT OF JAMES C. DAVIS—Filed February 9, 1922

In re Charles F. Boyd & Company, Bankrupts, Notice.

Ex Parte James C. Davis, Agent.

To Lionel K. Legge, Esq., Special Referee, and Messrs. Mitchell & Horlbeck, Attorneys for the Trustee:

You will please take notice that James C. Davis, named in the caption has been appointed by the President Agent for the collection of claims due the Federal Administration in place of John Barton Payne, Director General and Agent, and that all proceedings in the [fol. 22] matter above stated shall be hereafter conducted in the name of the said James C. Davis, Agent.

You will also take further notice that the claims heretofore filed in this proceeding in the name of the said John Barton Payne, Director General, are in effect and under the law claims in favor of the United States of America, the same having accrued during the Federal Administration under the Proclamation of the President and the Acts of Congress relating to the control and operation of the railroads, and therefore that said claims are entitled to a priority over all other claims proved against the bankrupt estate.

Rutledge, Hyde & Mann, Attorneys for James C. Davis, Claimant.

IN UNITED STATES DISTRICT COURT

ORDER RE RECORD ON APPEAL—Filed March 18, 1924

By consent of counsel in this matter,

It is ordered, that the record on appeal to the Circuit Court of Appeals from the order of this Court dated January 15th, 1924, shall consist of the following papers:

1. A. C. L. Proof of unsecured debt for $1,883.87 filed 23rd of February, 1921.

2. A. C. L. Proof of unsecured debt for $329.18 filed 23rd February, 1921.

3. Notice of Rutledge, Hyde & Mann, Attorneys for Claimant, served 9th February, 1922, and filed 9th February, 1922.

4. Proof of claim of Atlantic Coast Line Railroad Company.

5. Petition of James C. Davis, Federal Agent as to claim for freight in the operation of Atlantic Coast Line Railroad Company.

[fol. 23] 6. Order of Lionel K. Legge, Special Referee, 21st of August, 1922.

7. Petition for review, 6th September, 1922.

8. Decree and order of Judge H. A. M. Smith, thereon.

9. Petition for review and assignment or errors and order allowing appeal.

It is further ordered, That no bond be required of the appellant in connection with this appeal.

It is furthr ordered, That the time within which the præcipe may be filed shall be and the same is hereby extended through the day of the date of this order and that this consent order shall constitute and stand as such præcipe.

Henry A. M. Smith, U. S. Judge.

18 March, 1924.

We consent,

Rutledge, Hyde & Mann, Attorneys for James C. Davis, Federal Agent, Appellant. Mitchell & Horlbeck, Attorneys for Ernest H. Pringle, Trustee, Respondent.

IN UNITED STATES DISTRICT COURT

ASSIGNMENT OF ERRORS

Now comes James C. Davis, Federal Agent for claims due in operation of Atlantic Coast Line Railroad Company and files this his assignment of errors as to the order of this Court made and filed in this matter on January 15th, 1924, complaining as follows:

1. Because his Honor the District Judge erred in holding that the provisions of Sections 3466 and 3467 of the revised statutes do not apply to the claim in question.

[fol. 24] 2. Because his Honor the District Judge erred in holding that the claim of the petitioner for freight, storage and demurrage is not a claim of the United States and entitled to priority under the provisions of Sections 3466 and 3467 of the revised statutes.

3. Because his Honor the District Judge erred in holding that the claim of the petitioner for freight, storage and demurrage is not a

eferred claim and entitled to priority under the provisions of the nkrupt Act.

4. Because his Honor the District Judge erred in finding that the vernment agent the petitioner, waived the lien which he had on the ods in question for the carriage and storage of the same.

James C. Davis, Federal Agent for claims due in operation of Atlantic Coast Line Railroad Company, by Rutledge, Hyde, Mann, Attorneys for Petitioner.

IN UNITED STATES DISTRICT COURT

ORDER EXTENDING TIME TO FILE RECORD

It appearing that the record on appeal in the above case will ot be completed in time for filing with the Clerk of the Court of Ap- eals as required by the Rule, it is:

Ordered, That the time for filing the record be extended thirty ays from this date.

Ernest F. Cochran, United States Judge.

February 25, 1924.

IN UNITED STATES DISTRICT COURT

RDER EXTENDING TIME TO FILE RECORD—Filed March 24, 1924

It appearing that the record on Appeal in the above case will not e completed in time for filing with the Clerk of the Circuit Court fol. 25] of Appeals on 25th instant, it is: Ordered, That the time or filing the record be extended twenty days from this date.

Henry A. M. Smith, United States Judge.

IN UNITED STATES DISTRICT COURT

ORDER EXTENDING TIME TO FILE RECORD—Filed April 12, 1924

It appearing that the record on Appeal in the above case will not be completed in time for filing with the Clerk of the Circuit Court of Appeals on 13th instant, it is: Ordered, That the time for filing the record be extended ten days from this date.

Henry A. M. Smith, United States Judge.

Charleston, S. C., March 24, 1924.

IN UNITED STATES DISTRICT COURT

STIPULATION RE TRANSCRIPT OF RECORD—Filed March 22, 1924

It is hereby stipulated and agreed that the Clerk of this Court shall make up a transcript of the record in the above styled cause, and transmit the same to the Clerk of the United States Circuit Court of Appeals for the Fourth Circuit, at Richmond, Va., and that it be printed under the supervision of the Clerk of that Court in accordance with Rule 23.

Rutledge, Hyde, Mann & Figg, Counsel for Appellant;
Mitchell & Horlbeck, Counsel for Appellee.

[fol. 26] IN UNITED STATES DISTRICT COURT

CLERK'S CERTIFICATE

I, Richard W. Hutson, Clerk of the District Court of the United States for the Eastern District of South Carolina, do hereby certify, that the foregoing is as true and correct copy of the record and proceedings in the case of Charles F. Boyd Company, Inc., Bankrupt, Ex Parte James C. Davis, Federal Agent for claims due in operation of Atlantic Coast Line Railroad Company, as appears by the original record now on file in my office and as directed by order in lieu of præcipe.

Given under my hand and the seal of said Court at Charleston. S. C., in the District aforesaid, this 14th day of April, A. D. 1924.

Rchd. W. Hutson, C. D. C. U. S. E. D. S. C. (Seal.)

PROCEEDINGS IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 2245

AMES C. DAVIS, FEDERAL AGENT FOR CLAIMS DUE IN OPERATION OF Atlantic Coast Line Railroad Company, Appellant

versus

. H. PRINGLE, AS TRUSTEE IN BANKRUPTCY OF THE ESTATE OF Charles F. Boyd Company, Inc., Bankrupt, Appellee

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PPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF SOUTH CAROLINA, AT CHARLESTON

April 19, 1924, the transcript of record is filed and the cause locketed.

Same day, the original petition for appeal, order allowing appeal, nd citation are certified up under Sec. 7 of Rule 14.

Same day, the appearance of Benjamin H. Rutledge, Simeon Hyde, and Alex Koplin is entered for the appellant.

May 1, 1924, the appearance of Nath. B. Barnwell and
28 F. H. Horlbeck is entered for the appellee.

May 2, 1924, twenty-five copies of the printed record are iled.

Argument of cause

June 12, 1924 (June Term, 1924), cause came on to be heard, ogether with No. 2246, before Woods and Waddill, Circuit Judges, nd Webb, District Judge, and is argued by counsel and submitted.

29 *Opinion*

Filed September 29, 1924

UNITED STATES CIRCUIT COURT OF APPEALS, FOURTH CIRCUIT

No. 2245

JAMES C. DAVIS, FEDERAL AGENT FOR CLAIMS DUE IN OPERATION OF Atlantic Coast Line Railroad Company, appellant

versus

E. H. PRINGLE AS TRUSTEE IN BANKRUPTCY OF THE ESTATE OF Charles F. Boyd Company, Inc., bankrupt, appellee

---

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF SOUTH CAROLINA, AT CHARLESTON. IN BANKRUPTCY

(Argued June 12, 1924. Decided Sept. 29, 1924)

Before WOODS and WADDILL, Circuit Judges, and WEBB, District Judge.

Alex Koplin, General Attorney for U. S. Railroad Administration (Simeon Hyde; Lambert McAllister and Rutledge, Hyde, Mann & Figg on brief), for appellant, and N. B. Barnwell (F. H. Horlbeck; Whaley, Barnwell & Grimball, and Mitchell & Horlbeck on brief) for appellee.

30 WOODS, Circuit Judge:

Charles F. Boyd Company, Inc., was adjudged bankrupt on August 20, 1920. The Director General on February 3, 1921, filed claims amounting to $2,213.70 for freight, storage, and demurrage accruing to the Atlantic Coast Line Railroad Company during Federal control. Afterwards on February 27, 1922, the Director General by petition claimed priority over general creditors in the distribution of the assets. No point seems to have been made before the Referee or the District Court that the claim for priority was not properly set up.

If demurrage, freight, and storage charges in favor of the Director General are debts due to the United States, and as such are entitled to priority, the priority was inherent in the debts and required recognition by the court when called to its attention at any time before distribution of the assets.

The Referee reported against the claim of priority and the District Judge confirmed his report.

We are unable to agree with the Referee and the District Judge
t the debts due to the Director General were not debts due to
United States of the character given priority by section 3466
the Revised Statutes. The Supreme Court has decided other-
e. In *Du Pont* vs. *Davis*, April 7, 1924, the court says: "In tak-
over and operating the railroad systems of the country the
ited States did so in its sovereign capacity, as a war measure,
nder a right in the nature of eminent domain.' *North Carolina R.*
Co. vs. *Lee*, 260 U. S. 16; *Missouri Pacific R. R. Co.* vs. *Ault*, 256
S. 554; *Northern Pacific R. R. Co.* vs. *North Dakota*, 250 U. S. 135;
re Tidewater Coal Exchange, 280 Fed. 648, 649; and it may not
held to have waived any sovereign right or privilege unless
inly so provided. Moneys and other property derived from the
operation of the carriers during Federal control, as we have
seen, are the property of the United States, Sec. 12, 40 Stat.
457. An action by the Director General to recover upon a
bility arising out of such control is an action on behalf of the
ited States in its governmental capacity. *Ches. & Del. Canal Co.*
United States, 250 U. S. 123; *In re Tidewater Coal Exchange*,
) Fed. 648." *Davis* vs. *Corona Coal Co.*, decided by the Supreme
urt May 26, 1924.

The question of priority of debts, other than taxes, owing to the
ited States in the distribution of bankrupt estates is one of
ficulty. It is not to be decided on the general doctrine of priority
debts due the sovereign, for the Congress has undertaken to cover
whole subject by statutes. The act of 1797, R. S. 3466, pro-
les:

'Whenever any person indebted to the United States is insolvent,
whenever the estate of any deceased debtor, in the hands of the
ecutors or administrators, is insufficient to pay all the debts due
om the deceased, the debts due to the United States shall be first
isfied; and the priority hereby established shall extend as well
cases in which a debtor, not having sufficient property to pay
his debts, makes a voluntary assignment thereof, or in which
estate and effects of an absconding, concealed, or absent debtor
attached by process of law, as to cases in which an act of bank-
ptcy is committed."

virtue of this statute the United States had a preference in the
yment of its debts under any of the conditions mentioned in the
tute—but not in a distribution which for any reason did not
ne within the statute. *United States* vs. *Oklahoma*, 261 U. S. 253.
that case the State, setting up a claim in behalf of the depositors
a bank under authority of a State statute, was held to have
iority over debts due the United States, on the express ground
at the bank assets in the hands of a State commission did not
esent a condition under which the statute gave the United States
iority.

32 The Bankruptcy Statute of 1867, R. S. 5101, provided the following order of priorities:

"In the order for a dividend the following shall be entitled to priority and to be first paid in full in the following order:

First: The fees, costs, and expenses of suits, and of the several proceedings in bankruptcy under this title, and for the custody of property, as herein provided.

Second: All debts due to the United States, and all taxes and assessments under the laws thereof.

Third: All debts due to the State in which the proceedings in bankruptcy are pending, and all taxes and assessments made under the laws thereof.

Fourth: Wages due to any operative, clerk, or house-servant, to an amount not exceeding fifty dollars, for labor performed within six months next preceding the first publication of the notice of proceedings in bankruptcy.

Fifth: All debts due to any person, who, by the laws of the United States, are, or may be, entitled to a priority, in like manner as if the provisions of this title had not been adopted. But nothing contained in this title shall interfere with the assessment and collection of taxes by the authority of the United States or any State."

Thus not only taxes but all debts due the United States were given priority over all other liabilities, except costs and expenses of bankruptcy proceedings. In other words, the priority given all debts due to the United States by R. S. 3466 was sanctioned and reenacted by the Bankruptcy Statute of 1867. As the court said in *Lewis, Trustee*, vs. *United States*, 92 U. S. 618, the statute contained no qualification of priority of the United States, and the court could not interpolate one.

33 What limitation, if any, in the distribution of bankrupt assets did the subsequent Bankruptcy Act of 1898 put upon the general priority given the United States under the previous statutes? The Act of 1898 was intended to cover completely all matters of adjudication, administration, discharge, priorities, and distribution of assess. The Statute and rules made under it supplanted and annulled all previous inconsistent statutes and rules of the courts of common law and equity. *United States Fidelity & Guaranty Company* vs. *Bray*, 225 U. S. 205, 217. "The Act takes into consideration, we think, the whole range of indebtedness of the bankrupt, national, state, and individual, and assigns the order of Payment." *Guarantee Company* vs. *Title Guaranty Company*, 224 U. S. 152, 160.

The Statute provides the following order of priority:

(a) The court shall order the trustee to pay all taxes legally due to the United States, State, county, district, or municipality in advance of the payment of dividends to creditors.

(b) Debts to have priority, except as herein provided, and to be paid in full, * * * and the order of payment shall be: (4)

ages due to workmen, clerks, traveling or city salesmen, or servants, hich have been earned within three months before the date of the ommencement of the proceedings; and (5) debts owing to any erson who by the laws of the States or the United States is entitled priority.

The Congress thus took from debts due the United States, other an taxes, the priority given such debts along with taxes by the ct of 1867 by leaving out of the Act of 1898 other debts in providing for priority of taxes. This seems too clear for discussion; and

4 so the court decided in *Guaranty Company* vs. *Title Guaranty Company*, supra. There it was held that the Act of 1797, . S. 3466, the Bankruptcy Statute of 1867, R. S. 5101, and the ankruptcy Statute of 1898 must be considered in pari materia; nd that in bankruptcy proceedings the Act of 1898 superseded sec- ion 3466, R. S., so far as the two statutes were inconsistent.

It is argued, however, that priority is given the United States ext in order to debts for wages, by Sec. 64-b (5) "Debts owing to ny person who by the laws of the States or the United States is ntitled to priority." This grade of priority is not given to the nited States by virtue of R. S. 3466 unless the United States falls nder the designation of "any person." The Statute itself gives his definition: "(19) 'persons' shall include corporations except here otherwise specified, and officers, partnerships, and women, and hen used with reference to the commission of acts which are herein orbidden shall include persons who are participants in the for- idden acts, and the agents, officers, and members of the board of irectors or trustees, or other similar controlling bodies of corpora- ions." Sec. 1, cl. (19), Bankruptcy Act of 1898.

The failure to include the United States and the States in the efinition could not have been inadvertent. The United States and he several States of the Union are not persons and are not commonly hought of as persons, and if it had been intended that "persons" hould have such a comprehensive and unusual meaning as to include hem, the framers of the definition would have said so.

Again, when the Congress had already dealt with claims of the nited States under the name of the United States and had delib- rately limited its priority to taxes, it is hardly reasonable to ttribute to the Congress an intention to deal again with the claims f the United States and include them in a provision relating to debts of "any person."

5 It will be noticed further that the language of (5) Section 64–b of the act of 1898 is taken almost literally from the cor- esponding sub-division of the Bankruptcy Act of 1867, and in the bsence of the expression of a contrary intention the language hould be held to have the same meaning in the latter statute as in he former from which it was taken. In the Act of 1867 "persons" n sub-division (5), R. S. 5101, could not have been intended to nclude the United States because all the debts due to the United

States had been provided for and given priority over all other debts of any kind by sub-division (2) of the same section.

The record of the passage of the Bankruptcy Act of 1898 is significant. The bill as passed by the Senate contained the following priorities:

"SEC. 9. That the following debts shall have preference in the order named, over other debts in the distribution of the estate of the bankrupt, to wit:

"First: Debts due to servants or laborers employed by the bankrupt. * * *

"Second: Taxes or revenues due the United States.

"Third: Taxes due any State or Territory or the District of Columbia.

"Fourth: Taxes due any county, * * *"

"But none of such debts shall be recognized or paid unless duly proved and allowed as prescribed in reference to other debts and claims against the bankrupt."

All that followed the enacting clause of the Senate bill was struck out by the Committee of the House, and the House bill with about eighty amendments was substituted. The original House bill as introduced and referred to the Committee contained the following as to priorities:

36 "Sec. 64. Debts which have priority: (a) Debts owing to the United States, a State, a county, a parish, or a municipality, after being proved and allowed, shall have priority only in the event and to the extent that they constitute a lien upon the property of the estate." The committee changed this section to the form in which it was enacted in the act of 1898.

Thus it appears that after consideration of the question the Congress struck out a provision for priorities of all lien debts owing to the United States, the States and municipalities, and substituted for it a provision in the act of 1898 limiting the priority of the United States, the States and municipalities to taxes.

As it seems to us, the analysis of the statutes and the record of the passage of the act of 1898 require the holding that the law making power of the United States has limited its priority in bankruptcy to its claim for taxes.

This conclusion is opposed to the high authority of the Circuit Court of Appeals of the Second Circuit: *In re Tidewater Coal Exchange*, 280 Fed. 648, 650; and of the Eighth Circuit: *In re Western Implement Company*, 171 Fed. 81. In the view of these courts the United States and States are persons within the meaning of subdivision (5) of Section 64–b of the Bankruptcy Act of 1898, and, therefore, entitled to priority under R. S. 3466 over general creditors after payment of wages. In the Tidewater case the court cited as authority for the holding *In re Hibner Oil Company*, 264 Fed. 667. But the Circuit Court of Appeals of the Seventh Circuit in the latter case was called on to discuss and decide only the question whether a debt due to the Director General was a debt due to the

nited States: the court did not discuss the priority of a debt due the United States, for in the opinion it is stated the priority of ch a debt was conceded. Judge Rose in the District Court of Maryland expressed assent to these authorities *In re Atlantic, G. & P. S. S. Company*, 289 Fed. 146, but as the court held there was no debt to the United States the point was not ally involved. The State of Minnesota was held to be "a per-n" within the meaning of Section 64–b of the Bankruptcy Act 1898 by Judge Purdy in the District Court for that State, *In re Western Implement Company*, 166 Fed. 578; and the judgment was firmed by the Circuit Court of Appeals of the Eighth Circuit r the reasons stated by the District Judge, 171 Fed. 81. *The nited States* vs. ***National Surety Company***, 254 U. S. 73, does not cide the question. There the priority of debts due the United tates over general creditors seems to have been conceded by the rties, for the court is careful to say that the sole question pre-nted was whether in the distribution of a bankrupt estate the nited States has priority over a surety company claiming subroga-on to the rights of the United States. *Marshall, Receiver*, vs. *he People*, 254 U. S. 380; *United States* vs. *Oklahoma*, 261 U. S. 3; *Davis, Director General*, vs. *Pullen*, (First Circuit), 277 Fed. 0, and *Davis, Director General*, vs. *Miller-Link Lumber Company*, Fifth Circuit), 296 Fed. 649, are not authorities for either side, r the question of the right to priority arose in receivership pro-edings, and, therefore, did not involve the meaning of the pro-sions of Section 64 of the Bankruptcy Act of 1898 fixing priority. We find no binding authority opposed to the conclusion that the nited States has no priority in bankruptcy except for taxes. On e contrary we venture to think it is supported by the reasoning d conclusion of the court in *Guarantee Company* vs. *Title Guar-nty Company*, 224 U. S. 152. In *Sloan Shipyards* vs. *United States leet Corporation*, 258 U. S. 549, the majority of the court denied riority in a bankruptcy proceeding set up by the Emergency Fl et orporation on the ground that even if the United States would be entitled to priority, the Emergency Fleet Corporation was a separate entity and its claim for priority could not be sus-tained. The majority intimated no opinion on the question hether a debt to the United States other than for taxes would have en entitled to priority. The Chief Justice and Justices Van De-nter and Clark dissented from the reasoning of the majority, b t s to the claim to priority concurred in the result in this language ed by the Chief Justice: "As to the preference claimed against a nkrupt in No. 526 by the Fleet Corporation, I concur in the con-usion of the court that it cannot be allowed under the statute as preferences in bankruptcy, because I do not think it extends to laims of the United States except those for taxes."

For the reasons stated, and on the authority of *Guarantee Com-ny* vs. *Title Guaranty Company*, supra, and the views expressed by e Chief Justice and Justices Van Devanter and Clark above

quoted, we hold that in bankruptcy, debts due to the United States other than for taxes have no priority over general creditors.

No sound principle of public policy can be invoked in support of preference to the Federal Government and to the States over citizens in the collection of ordinary debts. On the contrary, the contractual operations of the Federal Government and of the States have become so extensive and so involved with the business of private citizens that priority to the Federal Government and to the States except for taxes would operative as an oppressive hardship on other creditors of bankrupts.

Affirmed.

39 *Decree*

Filed and entered September 29, 1924

UNITED STATES CIRCUIT COURT OF APPEALS, FOURTH CIRCUIT

No. 2245

JAMES C. DAVIS, FEDERAL AGENT FOR CLAIMS DUE IN OPERATION OF Atlantic Coast Line Railroad Company, appellant

vs.

E. H. PRINGLE, AS TRUSTEE IN BANKRUPTCY, OF THE ESTATE OF CHARLES F. Boyd Company, Inc., Bankrupt, appellee

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF SOUTH CAROLINA

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of South Carolina, and was argued by counsel.

On consideration whereof, It is now here ordered, adjudged, and decree by this Court that the decree of the said District Court
40 in this cause, be, and the same is hereby, affirmed with costs.

C. A. WOODS,
U. S. Circuit Judge.

SEPTEMBER 29, 1924.

On another day, to wit, October 30, 1924, the mandate of this court in this cause is issued and transmitted to the U. S. District Court at Charleston, South Carolina, in due form.

Same day, the original petition for appeal and order allowing appeal are returned to the Clerk of the U. S. District Court at Charleston, South Carolina.

Clerk's certificate

UNITED STATES OF AMERICA,
Fourth Circuit, ss:

I, CLAUDE M. DEAN, Clerk of the United States Circuit Court of Appeals for the Fourth Circuit do certify that the foregoing is a true copy of the entire record and proceedings in the therein entitled cause as the same remains upon the records and files of the said Circuit Court of Appeals.

In testimony whereof, I hereto set my hand and affix the seal of the said United States Circuit Court of Appeals for the
41 Fourth Circuit, at Richmond, Virginia, this 5th day of November, A. D. 1924.

[SEAL.]

CLAUDE M. DEAN,
U. S. Circuit Court of Appeals,
Fourth Circuit.

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